IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.264-SB of 1996
Date of decision : 10.8.2007

Phool Chand

...Appellant

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE MAHESH GROVER

.....

Present : Mr. P.C.Chaudhary, Advocate
for the appellant.

Ms.Shalini Attri, Asstt. Advocate General,
Haryana for the State.

...

MAHESH GROVER, J.

The appellant has been convicted under Sections 376/511/366/368 of the Indian Penal Code by the Addl.Sessions Judge, Jagadhri vide judgment dated 7.2.1996 and was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.150/- on each of the aforesaid counts.

The prosecutrix in this case is Meena Kumari wife of Jai Chand son of Phool Chand son of Atia Ram, the complainant. The complaint was made to the police allegedly on 5.7.1993 by the said complainant Phool Chand son of Atia Ram and it was stated therein by the complainant that his son Jai Chand had married Meena Kumari, the prosecutrix in March, 1992 and there was some discord between them. On 2.7.1993 at about 8.00 p.m. Meena Kumari went away from the house on the pretext of having a bath but she did not

return. On the next day the complainant went to village Loto where the parents of the prosecutrix resided but she was not found there and in the evening of 4.7.1993 it was learnt that Dharam Singh, co-accused of the appellant had taken her away and he kept her in wrongful confinement for three days and three nights, after which she was left at the house of Phool Chand appellant who subsequently left her at her parents home. Allegation was also made that the ear-rings of the prosecutrix were taken away by Dharam Singh and replaced by silver ornaments.

Meena Kumar prosecutrix was medico legally examined after five days of her being recovered.

The police after investigation presented a challan against Dharam Singh and the present appellant. The trial Court charged the appellant under Sections 342/366/376 read with Section 511 of the Indian Penal Code to which he pleaded not guilty and claimed trial.

The prosecution in order to establish the case against the appellant examined as many as 12 witnesses, which included the medical evidence and the report of the Forensic Science Laboratory, Madhuban which is on record as Ex.PL.

In the statement recorded under Section 313 of the Code of Criminal Procedure the appellant pleaded false implication. His co-accused Dharam Singh went a step further to say that the prosecutrix was a woman of easy virtue and was already having illicit relations with her brother-in-law (Devar).

The trial court after examining the evidence against the appellant convicted him in the manner aforesaid.

While assailing the judgment of conviction and sentence awarded to the appellant, learned counsel for the appellant contended by referring in extenso to the statement of the prosecutrix that it was highly improbable that she would have remained with Dharam Singh for three days and three nights without any protest considering the entire narration and the sequence of events which have been detailed by her. That apart, it was contended that except for the bald allegations levelled by her against the appellant that he attempted to commit rape upon her, there is no evidence to substantiate her plea. Besides, the testimony of PW3 Phool Chand reveals that she was in the police station on 3.7.1993, the day after she had gone missing, but the FIR was registered on 5.7.1993 and if this is to be believed then it is not possible that she would have been in the company of Dharam Singh and she was kept in illegal confinement.

Counsel for the State contended that the conviction of the appellant is perfectly in order as the prosecution has specifically established his complicity.

I have heard the learned counsel for the parties and have perused the record.

There is no doubt that a person can be convicted for having committed an offence under Section 376 of the Indian Penal Code without there being any corroborative evidence on record if the statement of the prosecutrix is found to be inspiring. But in the instant case a perusal of her statement and the narration of sequence of events only raises eyebrows and by no stretch of imagination can it be said that her statement is an outcome of a forthright outpouring of a

woman wronged.

Disseminating her statement further she stated that she had escaped from her matrimonial home to take bath at night time without specifying as to where she was heading for the bath. Besides, after having met Dharam Singh on the way after walking for four hours she sat with him on the road side and went on talking for about 1-1/2 hours. She is said to have left her house in the evening at 8.00 p.m. and thereafter she alleges that Dharam Singh committed sexual intercourse with her forcibly in the field and took her to his house where his wife and children were present and he made her to stay for night in the house where she is said to have slept with his wife. She further states that she was kept in the confinement for as many as three days before Dharam Singh left her in the house of Phool Chand. It is amazing that she did not make any attempt either to escape from the custody or to raise any protest against her captor and violator. Even with Phool Chand the appellant she is said to have travelled in the bus and walked the streets without any protest. There are no allegations that she was put under any kind of threat or that she had been intimidated

The prosecutrix was examined on the fifth day and the doctor did not give any categoric opinion regarding the rape. No injury was found upon her person.

Apart from the statement of the prosecutrix, which is wholly unreliable, the entire case falls flat on its face once the testimony of Phool Chand complainant is read because he in his testimony has stated that the prosecutrix was in police station on

3.7.1993. The relevant portion of the cross-examination of the statement of the complainant is as below :-

> "....On the same day i.e. 3.7.93, police had recorded the statement of Tajinder Singh, Risal Singh and my statement Ex.PE was also recorded by the police on 3.7.93. Immediately on 3.7.93, we went to v. Loto and at 8/9 p.m. we reached v. Loto and in the same car we brought Meena at v. Nahar-Tahar on 3.7.93. Police did not conduct further enquiry in this regard. Only father of Meena was brought in the car with Meena on 3.7.93. There was no quarrel between the husband and wife...."

The circumstances when considered in their totality clearly belie the prosecution case and in the absence of any evidence to establish the allegations against the appellant, this Court is left with no other option but to acquit him of the charges framed against him.

Consequently the appeal is allowed and the appellant is acquitted of all the charges against him.

10.8.2007 (MAHESH GROVER)
JUDGE

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